APPENDIX A

Opinion of the Court (R 85a)

I have listened carefully to the testimony and scrutinized the documentary evidence which has been presented to me on this case. I could jump into the philosophical, theological doctrine and religious aspects of much of the subject matter of the testimony. I do not deem it necessary to do so.

The evidence submitted by the Government in my opinion establishes beyond a reasonable doubt that the defendant is guilty of the offense charged in the indictment. Rule 23 of the Federal Rules of Criminal Procedure which covers such a trial such as the present one without a jury provides in subdivisoin C thereof that in a case tried without a jury the Court shall make a general finding and shall in addition on request find the facts special.

I have made a general finding that the defendant is guilty of the offense charged in the indictment. Unless there is a request for a special finding it is unnecessary for me to proceed further.

APPENDIX B

Findings of Fact and Conclusions of Law

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Criminal No. 93-65

UNITED STATES OF AMERICA,

Plaintiff,

—VS.—

STEPHEN SPIRO,

Defendant.

Appearances:

DAVID M. SATZ, JR., Esq.
United States Attorney

By J. NORRIS HARDING, Esq.
Asst. U. S. Attorney

FRANKEL & FRANKEL, Esqs.

By ESTHER STRUM FRANKEL, Esq.
Attorneys for Defendant

WORTENDYKE, *District Judge*:

Stephen Spiro, a resident of New Jersey, was indicted by the Grand Jury in and for this District on March 3,

1965. The indictment charged that on January 6, 1965, at Newark, in this District, Spiro, being a registrant with Selective Service Local Board No. 4 for New Jersey, and classified as I-A, and being required by law under a written order dated December 21, 1964, and transmitted to him on January 6, 1965 to appear for, and if found qualified, to submit to induction into Military Training and Service in the Armed Forces of the United States, and, the said Spiro, having appeared at the United States Army Induction Station in Newark, New Jersey, on January 6, 1965, and having been found qualified for Military Service, did knowingly, wilfully and unlawfully fail to submit himself for induction into said Military Training and Service in violation of 50 U.S.C. App. §462.

Defendant pleaded not guilty to the indictment and, represented by competent counsel, went to trial thereunder before the court without a jury; having duly waived a jury trial by compliance with the requirements of F.R.Cr.P., Rule 23(a), 18 U.S.C.A.

Pursuant to Rule 23 (c) and the requests of the defendant, I find specially from the evidence the following facts.

At all relevant times defendant has been a citizen of the United States and resident in this District. He was born on December 6, 1939 and registered with Local Board No. 4 for New Jersey of the Selective Service System at Hackensack in this District. Registrant completed and returned to the local board a Classification Questionnaire, and upon the information therein disclosed, as supplemented by a letter on October 19, 1961, verifying his attendance as a student at the University of Chicago, Illinois, registrant was granted student deferment by the board on November 15, 1961, and was classified II-S for the 1961-1962 school term.

On August 31, 1962, as a result of appropriate physical and other examinations registrant was found physically, mentally and morally qualified for military service.

On November 13, 1962, by letter of that date to the Local Board, registrant requested and obtained a form for his use as a Conscientious Objector, which he completed and returned to the Board.

Upon the basis of information contained in his Conscientious Objector Form, registrant was classified by the Local Board on December 11, 1962 as I-A-O by reason of being opposed to combat service. From this classification registrant appealed to the Appeal Board, and during the pendency of his appeal registrant transmitted to the Appeal Board copies of certain published writings of the registrant. Also during the pendency of the appeal the Department of Justice of the United States recommended to the Appeal Board that registrant be classified I-A. The decision of the Appeal Board adopting this classification was by a vote of 3 to 0. Registrant received written notice of this classification dated December 15, 1964, and said notice was admitted in evidence as an exhibit in behalf of the defendant.

On December 21, 1964 registrant was ordered by the Local Board to report for induction into the Armed Forces of the United States at the office of the Local Board No. 4, 20 Banta Place, Hackensack, New Jersey on January 6, 1965 at 6:30 A.M.

By letter dated December 24, 1964 to the Local Board registrant requested a student deferment to permit his attendance at Fairleigh-Dickinson University, Teaneck, New Jersey. This request was denied by the board on December 28, 1964.

On December 29, 1964 registrant by letter requested of the State Director a temporary cancellation of the Local Board's order for induction. On January 4, 1965 the State Director advised Registrant that his requested intercession was unwarranted.

On January 5, 1965 registrant advised the Local Board by letter that if he were found qualified for induction upon the day following, he would refuse induction. On January 6, 1965 registrant reported at the Army Induction Station in the City of Newark, New Jersey and there refused to take the oath and to accept induction into the Armed Forces of the United States and on that occasion signed a written statement reiterating his refusal to be inducted.

Registrant further informed the appropriate officer of the Army Induction Station in writing on the date of his refusal to be inducted as follows: "I am a religious pacifist; I believe that to serve in the Armed Forces of the United States would be giving assent to the military policy of the United States Government, which I consider immoral. The military policy of the United States, as publicly stated by officers of the United States Government, includes a conditional willingness to directly attack civilians by the nuclear bombing of centers of population; the Roman Catholic Church, of which I am a member, specifically prohibits such action. Therefore, I am morally bound to refuse to serve in any organization whose mission is the execution of these immoral policies."

Defendant, testifying in his own behalf, readily admitted that he had refused to submit to induction and that he had signed a statement at the Induction Center containing such a refusal. At the age of 18, he registered with his Local Board and received a Classification Questionnaire which he completed and returned to the board. He did not claim

to be a Conscientious Objector at that time but in the Fall of 1962 after reading books by theologians, meditating thereon, and obtaining spiritual advice, he came to the conclusion that he was conscientiously opposed to war. He thereupon obtained a form of Conscientious Objector Questionnaire in which he elaborated upon the basis for his position. He testified that he was a member of the Roman Catholic Church which has a traditional teaching originating with St. Augustine, developed by St. Thomas Aquinas and discussed and published by later Doctors of the Church having to do with the circumstances under which a Christian may participate in war. Registrant claimed that his readings in the field of Ethics disclosed seven requirements for simultaneous verification before a war may be considered just and as such appropriate for participation therein by a Christian. Defendant enumerated these requirements as follows: The war must be a last resort when all other means of settling the dispute have failed. It must be declared and conducted by legitimate authorities, there must be a reasonable assurance of its successful outcome, there must be a just cause for the war and there must be a proportionality in which the good effects outweigh the evil, only the use of legitimate means of warfare may be permitted and there must be a right intention on the part of those responsible for conducting the war, i.e., the will to peace. Defendant further testified that certain activities render a war unjust and, therefore, unsuitable for Christian participation. Among such activities are direct attacks upon civilians, the employment of nuclear weapons, area bombing, bombardments of cities and the sacking of villages. Defendant claimed that his expressed views and opinions were taken from the tradition of the Roman Catholic Church, including "• • • Dogma, which is the

proclaimed teachings [sic] pronounced by a Pope or Council, and the doctrine of the traditional teaching of the Church which is passed down generation to generation, discussed by the Theologians but never officially promulgated in an official statement of Pope or Council." Defendant admitted that the Church rarely took a position on war and that the officials of the Church in each of two combatant nations supported the cause of the nation to which they belonged. Accordingly, said defendant, the individual is relegated to his own conscience. He further testified that there had never been a just war throughout history and that it was unlikely that any future war would be just. At great length the defendant reviewed the history of the Roman Catholic Church and the official pronouncements of the hierarchy thereof respecting war and the use of weapons therein. The defendant appeared on four occasions before his Local Board; the last occasion being that upon which he refused to submit to induction into the Armed Forces. The first three of those appearances were prior to defendant's assertion of the claim that he was a Conscientious Objector. He testified that he was never informed that there was an advisor for registrants or that there was an appeal agent available to him, and the notice of his final I-A Classification did not disclose that he could obtain the assistance of a Government appeal agent or advisor.

Defendant's cross examination disclosed that he had received his education in private Catholic schools, the latest of which was a military high school, in which he spent four years, participating in whatever military activities were offered. After graduating from high school he attended the University of Chicago intermittently during the period from 1957 to 1964. At the time of the trial, he was a student at Fairleigh-Dickinson University. Defendant

was initially classified by Selective Service on February 11, 1958 as I-A. On November 15, 1961 he was given a II-S Classification. His enrollment in the University of Chicago terminated February 26, 1962, and on March 13, 1962 he was classified I-A. In April of 1962 defendant took a qualifying examination for the United States Air Force, and in July or August of the same year applied for enlistment in the Naval Air Reserve. On August 31, 1962 he was physically examined for induction into the military service and found acceptable for I-A Classification. It was not until October or November, 1962, while he was working in the National Office of the Student Peace Union in Chicago that he read a book by a Trappist Monk followed by another book on the basic Ethics of War which induced his mind to explore the doctrine of a just war. This reading led him to apply to his Local Board for a classification as Conscientious Objector and he filed Form No. 150 on November 15, 1962 to that end. The statements which he made therein incorporate the views and reasons the defendant has advanced before me and to which I have already alluded.

Pursuant to his application as a Conscientious Objector the defendant was classified I-A-O by his Local Board. This classification would have allowed him to perform noncombatant service in the Army and induced him to appeal for the classification of I-O. He was thereafter investigated by the Department of Justice and given a hearing in August 1964, in the City of Newark, New Jersey. At that hearing he presented witnesses in support of his position. Although the defendant had claimed in Form No. 150 a classification of Conscientious Objector, he maintained before the hearing official in August 1964, that there had never been a just war in history and that there never could

be. He based this opinion upon his own judgment informed by the teachings of the Church. The defendant further stated to the hearing official that he would have no objection to the use of conventional weapons against soldiers nor to being in the Armed Forces of the United States if equipped only with guns that fired bullets, provided that the Government's military policy prohibited the bombing of cities having no military value.

Defendant admitted that on January 6, 1965 at the Armed Forces Induction Station in the City of Newark when he refused to submit to induction, he was fully aware of what he was doing and of the penalties provided for guilt of that refusal. His stated reason for such refusal was the dictate of his conscience.

The evidence disclosed beyond a reasonable doubt that the defendant Stephen Spiro was properly classified by the appropriate Selective Service Authorities as I-A for Military Service in the Armed Forces of the United States. The evidence further disclosed beyond a reasonable doubt that defendant was accorded due process of law in his proceedings before the Local Board and before the Appeal Board. The evidence further disclosed beyond a reasonable doubt that the defendant having been duly classified for Military Service in the Armed Forces of the United States as I-A, having been found physically, mentally and morally fitted to participate in combat in the Armed Forces of the United States, and having been ordered to report for induction into said Armed Forces on January 6, 1965 at Newark, New Jersey, did knowingly, wilfully and unlawfully refuse to submit to such induction in violation of the provisions of 50 U.S.C. App. §462. Therefore, I find the defendant guilty as charged in the indictment.

REYNIER J. WORTENDYKE, JR.
Judge, United States District Court

APPENDIX C

Opinion of the Court

(Filed August 29, 1967)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16073

UNITED STATES OF AMERICA

—v.—

STEPHEN SPIRO,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued June 5, 1967

Before:

STALEY, *Chief Judge*, KALODNER, *Circuit Judge*,
and SHERIDAN, *District Judge*.

By STALEY, *Chief Judge*.

This appeal is from a conviction under an indictment charging a violation of 50 U.S.C. App. § 462 (1964). Defendant, Stephen Spiro, was classified I-A by his local

draft board and at his trial he challenged the validity of this classification, contending that he should have been classified as a conscientious objector. The district judge, sitting without a jury, found that appellant, a Roman Catholic, was properly classified by the appropriate Selective Service authorities as I-A. He further found that appellant was accorded due process before the local board and the appeal board. The same issues that were raised in the district court are raised here.

Appellant claims that the granting of conscientious objector status to Jehovah Witnesses who will fight only in a theocratic war and the denial of such status to a Catholic who will fight only in a "just war" violates his federally protected right to religious freedom and equal protection of the law. Both the Selective Service authorities and the district court found that appellant did not meet the statutory test for granting of conscientious objector status. See 50 U.S.C. App. § 456(j) (1964). We have authority to reverse only if there has been a denial of basic procedural fairness or if the conclusion of the board is without any basis in fact. Estep v. United States, 327 U.S. 114 (1946); United States v. Sturgis, 342 F.2d 328, 331 (C.A.3), cert. den., 382 U.S. 879 (1965); Blalock v. United States, 247 F.2d 615, 619 (C.A.4, 1957).

After thoroughly reviewing the record we can only conclude that appellant's classification did have a factual basis. Once this conclusion is reached, we are without jurisdiction to delve into the legal and theological implications of appellant's beliefs. We do have jurisdiction, however, and we deem it necessary, to review the procedures followed by appellant's local board in order to determine whether he was afforded due process.

Appellant contends that he was denied due process under 32 C.F.R. §§ 1626.41,[1] 1626.61(b),[2] and 1627.8[3] (1962) when the local board failed: (1) to notify him that a Government appeal agent was available to advise him, (2) to apprise him that the Government agent had ten days within which to request reconsideration by the appeal board or to request a Presidential appeal, and (3) to wait ten days after sending the notice of classification, before issuing an induction order.

Assuming, arguendo, that the local board did violate one or more Selective Service Regulations, before we can set aside the conviction it must also appear that appellant was prejudiced by the alleged violations. United States ex rel. Lipsitz v. Perez, 372 F.2d 468 (C.A.4, 1967); United States v. Sturgis, 342 F.2d 328 (C.A.3, 1965), cert. den., 382 U.S. 879 (1965); United States v. Lawson, 337 F.2d 800 (C.A.3, 1964), cert. den., 380 U.S. 919 (1965). It is urged that the Government should bear the burden of showing that no harm occurred. Steele v. United States, 240 F.2d 142 (C.A.1, 1956). But this Circuit stated in

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[1] See note 5 *infra*.

[2] The relevant portions of 32 C.F.R. § 1626.61(b) (1962) are set out on page 14a of the text *infra*.

[3] Section 1627.8 of the Selective Service Regulations provides:

"The local board shall not issue an order for a registrant to report for induction either during the period afforded the registrant to take an appeal to the President or during the period such an appeal is pending. Any order to report for induction which has been issued during either of such periods shall be ineffective and shall be cancelled by the local board. Whenever an appeal to the President has been taken by a person entitled to do so, any order to report for induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the local board." 32 C.F.R. § 1627.8 (1962).

United States v. Sturgis, "it seems the better view that the person asserting it, here the appellant, should have the burden of proving prejudice." 342 F.2d at 331. Accord, Bradshaw v. United States, 242 F.2d 180 (C.A.10, 1957); Rowton v. United States, 229 F.2d 421 (C.A.6), cert. den., 351 U.S. 930 (1956); United States v. Manns, 135 F. Supp. 624 (N.D. Ill. 1955), aff'd, 232 F.2d 709 (C.A.7, 1956).

Although appellant has failed to demonstrate that he was prejudiced because of the alleged failure of the local board to comply with Selective Service Regulations, we have independently examined the record because of the seriousness of the question involved. Our examination discloses no prejudice to appellant. Selective Service Regulation 1604.41 (32 C.F.R. § 1604.41 (1962)) requires conspicuous posting in the local board office of the names and addresses of advisors to registrants within the local board area.[4] At appellant's trial the chief clerk of the local board testified that the names of both the government appeal agent and the advisors to registrants were posted on the bulletin board in the office of the local board. Appellant also testified that on the day of his induction he noticed the names of these individuals on the bulletin board.

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[4] Section 1604.41 of the Selective Service Regulations states:

"Advisors to registrants may be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their liabilities under the selective service law. Every person so appointed should be at least 30 years of age. The names and addresses of advisors to registrants within the local board area shall be conspicuously posted in the local board office." 32 C.F.R. § 1604.41 (1962).

Selective Service Regulation 1626.61(b) (32 C.F.R. § 1626.61(b) (1962)) provides in part:

> "At any time within 10 days after the date when the local board mails to the registrant a Notice of Classification * * *, or at any time before the registrant is mailed an Order to Report for Induction, * * * the government appeal agent, if he deems it to be in the national interest or necessary to avoid an injustice, may prepare and place in the registrant's file a recommendation that the State Director of Selective Service either request the appeal board to reconsider its determination or appeal to the President. * * *"

Appellant claims that the mailing of the order to report for induction within six days of the mailing of the notice of classification reduced the time in which the government appeal agent could have acted in his behalf from ten days to six days. We do not agree. Appellant's notice of classification was mailed on December 15, 1964, but he was not ordered to report for induction until January 6, 1965, some 22 days later. We see no reason why the mailing of the notice of induction would have precluded the government appeal agent from entertaining a request by appellant during the remaining four-day period. Nor do we see any merit in appellant's contention that 32 C.F.R. § 1626.41 (1962) renders the induction order ineffective.[5]

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[5] Selective Service Regulation 1626.41 provides:

> "The local board shall not issue an order for a registrant to report for induction either during the period afforded the registrant to take an appeal to the appeal board or during the period such an appeal is pending. Any order to report for induction which has been issued during either of such periods

Section 1626.41 applies only during the period when a registrant may appeal his classification or during the period when such an appeal is pending. It noticeably omits all reference to the time period applicable in § 1626.61(b) (the time in which a government appeal agent may act on behalf of a registrant).

As mentioned above, even if we assume that appellant's local board failed to comply with one or more Selective Service Regulations, we do not see how such failure could have been prejudicial. Appellant had been classified I-A by the local board, he appealed, had a hearing before a Hearing Officer, and was investigated by the Conscientious Objector Section of the Department of Justice. At all these levels of the Selective Service System, the same decision was reached. Appellant has not shown, nor are we persuaded by our examination of the record, that intervention of the government appeal agent would have evoked any other classification.

The judgment of the district court, therefore, will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

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shall be ineffective and shall be cancelled by the local board. Whenever an appeal to the appeal board has been taken by a person entitled to do so, any order to report for induction which has previously been issued to the registrant shall be ineffective and shall be cancelled by the local board." 32 C.F.R. § 1626.41 (1962).

APPENDIX D

Order Amending Opinion

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 16073

UNITED STATES OF AMERICA

—v.—

STEPHEN SPIRO,

Appellant.

Present:

STALEY, *Chief Judge,* KALODNER, *Circuit Judge,*
and SHERIDAN, *District Judge.*

The opinion of this court filed August 29, 1967, in this case is hereby amended by striking out on page 5, line 4 of the first full paragraph the following language: "Appellant had been classified I-A by the local board, he appealed, had a hearing before a Hearing Officer, and was investigated by the Conscientious Objector Section of the Department of Justice. At all these levels of the Selective Service System, the same decision was reached," and inserting in lieu thereof the following language: "Appellant had initially been classified 1-A-0 by his local board. He appealed to the Selective Service Appeal Board seeking a 1-0 classifi-

cation. He had a hearing before a Hearing Officer, and was investigated by the Conscientious Objector Section of the Department of Justice. At all appellate levels of the Selective Service System, the same decision was reached. The Hearing Officer, the Justice Department, and the Appeal Board were of unanimous agreement that appellant did not meet the statutory exemption set forth in 50 U.S.C. App. § 456(j) (1964), in that he had not demonstrated a conscientious objection to participation in war in any form. By a vote of 3 to 0, the Appeal Board classified appellant 1-A. His file was returned to the local board, and he was notified of his 1-A classification."

By THE COURT,

STALEY,
Chief Judge.

Dated: October 20, 1967

APPENDIX E

Constitutional Provisions, Statutes and Regulations Pertinent Parts Involved in this Petition

Constitution of the United States:

Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

Amendment V:

No person shall be held to answer for a capital or otherwise infamous crime . . . nor be deprived of life, liberty or property, without due process of law; . . .

Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes

5 U.S.C. 1005 Ancillary Matters

Except as otherwise provided in this Chapter—

(a) Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by coun-

sel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding . . . .

28 U.S.C. 1254. Courts of Appeals; Certiorari; Appeals, Certified Questions.

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

50 U.S.C. App. Sec. 456 (j)

(Sec. 6 (j) of the Universal Military Training and Service Act, as amended (Pub. Laws 51, 82nd Cong. approved June 19, 1951).

(j) Conscientious objectors. Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title,

be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice of inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to per-

form for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If, after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.

50 U.S.C. App. 460 (b)(1):

Sec. 10 (b)(1) U.M.T. & S. Act:

(b) Officials, employees, and boards; Printing; Paroles; Leases.—The President is authorized—

(1) To prescribe the necessary rules and regulations to carry out the provisions of this title;

50 U.S.C. App. 462 (a):

(Sec. 12 (a) U.M.T. & S. Act)

Sec. 12. Penalties: (a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions

of this title, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title, or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title, or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title, or any person or persons who shall knowingly hinder or interfere or attempt to do so on any way, by force or violence or otherwise, with the administration of this title, or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried

by court martial, and, on conviction shall suffer such punishment as a court martial may direct . . .

50 U.S.C. App. 463 (b):

Sec. 13 (b) U.M.T. & S. Act

Sec. 13 (b) All functions performed under this title shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 of such Act.

Selective Service Regulations:

ADVISORS TO REGISTRANTS

32 C.F.R. Sec. 1604.41: Appointment and Duties: Advisors to registrants may be appointed by the Director of Selective Service upon recommendation of the State Director of Selective Service to advise and assist registrants in the preparation of questionnaires and other selective service forms and to advise registrants on other matters relating to their liabilities under the selective service law. Every person so appointed should be at least 30 years of age. The names and addresses of advisors to registrants within the local board area shall be conspicuously posted in the local board office.

GOVERNMENT APPEAL AGENTS

32 C.F.R. Sec. 1604.71: Appointment and Duties: (a) For each local board a government appeal agent shall be appointed by the President upon recommendation of the Governor.

(b) . . .

(c) Each government appeal agent and associate government appeal agent shall, whenever possible, be a person with legal training and experience and shall not be a member of the armed forces or any reserve component thereof.

(d) It shall be the duty of the government appeal agent and in his absence or inability to act or at his direction, the duty of the associate government appeal agent:

(1) To appeal, as prescribed by the regulations in this chapter, from any classification of a registrant by the local board which is brought to his attention and, in his opinion, should be reviewed by the appeal board.

(2) . . .

(3) To suggest to the local board a reopening of any case where the interests of justice, in his opinion, require such action and to submit to the local board, with such suggestion, the information obtained by his investigation of the case which has caused him to arrive at his decision that the case should be reconsidered.

(4) . . .

(5) To be equally diligent in protecting the interests of the Government and the rights of the registrant in all matters.

32 C.F.R. Part 1624—

APPEARANCE BEFORE LOCAL BOARD

1624.1 (b) No person other than a registrant shall have the right to appear in person before the local board, but the local board may, in its discretion, permit any person to appear before it with or on behalf of a registrant:

Provided, That if the registrant does not speak English adequately he may appear with a person to act as interpreter for him: *And provided further,* That no registrant may be represented before the local board by anyone acting as attorney or legal counsel.

Reconsideration By Appeal Board

32 C.F.R. Sec. 1626.61 (b): At any time within 10 days after the date when the local board mails to the registrant a Notice of Classification (SSS Form No. 110) as provided in section 1626.31, or at any time before the registrant is mailed an Order to Report for Induction (SSS Form No. 252) the government appeal agent, if he deems it to be in the national interest or necessary to avoid an injustice, may prepare and place in the registrant's file a recommendation that the State Director of Selective Service either request the appeal board to reconsider its determination or appeal to the President. The registrant's file shall then be forwarded to the State Director of Selective Service. As soon as the State Director of Selective Service has acted upon the recommendation of the government appeal agent he shall advise the local board and, if he determines neither to request the appeal board to reconsider its determination nor to appeal to the President, he shall return the file to the local board.

APPENDIX F

Letter from Chief of the Conscientious-Objector Section, T. Oscar Smith, to New Jersey Appeal Board

Sep. 4, 1964

Chairman, Appeal Board
Panel No. 1, State of New Jersey
Selective Service System
1006 Broad Street
Newark 2, New Jersey

Re: Stephen Spiro
Conscientious Objector

Dear Sir:

As required by Section 6(j) of the Universal Military Training and Service Act, as amended, an inquiry was made by the Department of Justice in the captioned matter and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Mr. William P. Reiss, a Hearing Officer for the Department of Justice.

The information obtained from the inquiry and considered by the Department of Justice in arriving at its recommendation is contained in the Resume of the Inquiry attached hereto and made a part hereof.

Registrant was born in New York City on December 6, 1939. His mother is a Roman Catholic and the registrant was baptized in that faith as an infant. He graduated from Xavier High School in New York City in June 1957, ranking

68 in a class of 201 and thereafter attended the University of Chicago, Chicago, Illinois, and was placed on probation during the academic year 1961-62 because of below-average grades. He also attended Fairleigh Dickinson University, Teaneck, New Jersey, for one semester, leaving in May 1960 with three credits of work in a liberal arts curriculum. His SSS Form 100, received by his local board in January 1958, made no claim of conscientious objection, and following a physical examination, was found acceptable for service on August 31, 1962. His SSS Form 150, received by his local board on November 26, 1962, claimed conscientious objection as to combatant and noncombatant military training and service. His local board successively classified him I-A, II-S, I-A, and, finally, I-A-O on December 11, 1962 and he appealed. The appeal board tentatively determined that he should not be classified in Class I-O or in a lower class.

Annexed hereto and made a part hereof are Exhibits A through U submitted to the Department of Justice in behalf of the registrant.

Registrant appeared before the Hearing Officer at Newark, New Jersey on August 18, 1964, accompanied by his mother and an associate director of the Catholic Worker who is also a member of the Central Committee of Conscientious Objectors and a member of American PAX Association. The registrant told the Hearing Officer that his leaving the University of Chicago was due to financial difficulties and also due to the fact that his marks were not satisfactory and that he was not able to adapt himself to the freedom of the university in contrast to the disciplinary regimen of the military Catholic high school which he had previously attended. He stated that termination of his services as a carrier at the Hackensack Post Office was due to an unfamiliarity with the area, to his being ill

with the German measles, to blisters on his feet, and to an upset stomach. He stated that his later work at the Woodlawn Hospital in Chicago made it difficult to carry on his college work satisfactorily. He said he took a qualifying examination for the Air Force in April 1962 and in July and August 1962, was pre-processed for the Naval Air Reserve. He said that he joined the Student Peace Union in Chicago in August 1962 and that it was in September or October 1962 that he decided that he was a conscientious objector and began reading intensively on moral theology, particularly relating to war and nuclear arms, and, although he claimed conscientious objection in November 1962, he did not request a hearing before the local board. He was readmitted to the University of Chicago in the fall of 1963, terminating his work at the hospital in November 1963 and he left the university at the end of December 1963 with a disqualification for further studies because of poor grades. He remained in Chicago in January and February 1964, participating in Student Peace Union activities and since returning to the home of his parents in Bogota, New Jersey in February 1964, he has been employed as a margin clerk in a brokerage house in New York City.

Questioned by the Hearing Officer as to why he did not claim conscientious objection until after he had taken his physical examination, he stated that he did not acquire his conscientious objection until September or October 1962 and until then, he was willing to serve in the Armed Forces. He told the Hearing Officer that the basis of his conscientious-objector view is the Catholic doctrine that a nation engaged in warfare is morally correct only if it is engaged in a just war and that he believes that he cannot, in good conscience, support this country in a war that is not a

just war judged by Thomistic criteria; that indiscriminate mass bombing of cities and civilians and the use of nuclear weapons is the use of an illegitimate means of warfare in which evil outweighs good; that the United States is inevitably committed to mass bombing of cities and civilians and any war that the United States would participate in would not be a "just war." He said that by serving in the Armed Forces he would be giving tacit assent to what he feels is the nuclear policy of this country and that even in noncombatant service he would feel that he was still a part of the military establishment. Registrant's mother stated that she violently disagrees with her son's views but believes that he is sincere in his views. The associate editor of the Catholic Worker expressed his view that the registrant's position is a tenable one.

The Hearing Officer reported that the registrant frankly admitted that he could not in good conscience object to participation in a "just war"; that he also admitted that his belief that the next war would be an unjust war is a matter of opinion; that he admitted that there is no officially stated Catholic Church opinion against war; that he admitted the presence of Catholic chaplains in the Armed Forces; that he admitted that his position was based on a political analysis of warfare from an historical as well as current point of view; that he admitted that he had no objection to the use of conventional or nuclear weapons against soldiers and would have no objection to being in the Armed Forces of the United States equipped only with guns that shot bullets provided military policy prohibited the bombing of cities having no military value.

The Hearing Officer found that the registrant is a sincere and devout member of the Catholic Church and is sincere in his adherence to his views notwithstanding that he came

late to his conscientious-objector position but that the registrant does not have a conscientious objection to participation in war in any form; that there is no basis for distinction between combatant and noncombatant service as far as the registrant is concerned and that he has not met the terms of the statutory exemption in the Universal Military Training and Service Act. The Hearing Officer recommended that the conscientious-objector claim of the registrant be not sustained.

Exemption from military service under the Universal Military Training and Service Act, as amended, is given only to that registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. The words, "in any form" relate not to war but to participation in war. *Taffs* v. *United States,* 208 F. 2d 329, *certiorari denied,* 347 U.S. 928. The registrant, by his own admission, is willing to engage even in a combatant capacity in a war with limitations he himself prescribes. It is believed that the registrant has failed to place his conscientious objection within the scope of the statutory exemption of the Act.

The Department of Justice concurs in the Hearing Officer's determination and recommends to your board that the conscientious-objector claim of the registrant be not sustained and that he be not classified in Class I-O or in Class I-A-O.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

T. Oscar Smith
Chief,
Conscientious-Objector Section

APPENDIX G

Letter from Petitioner to New Jersey Appeal Board

64 Pine Street
Bogota, New Jersey 07603
12 October 1964

Appeal Board
Panel No. 1, State of New Jersey
Selective Service System

Gentlemen,

I have already submitted a great deal of information explaining my position several times over. I will not bore you by going over everything again, but will refer only to relevant points.

Since the Hearing Officer has accepted the sincerity of my position, "notwithstanding that (I) came late to (my) conscientious-objector position", I assume that you are most concerned with justifying my position under the law.

I hold that, as presently publicly stated, the military policy of the United States involves a conditional willingness to engage in a war which is not "just" according to the teachings of my Church. Since participation in military service would indicate *at least* a tacit acceptance of this policy, I am morally bound in conscience to remain outside the military structure.

Moreover, even if the United States were to publicly renounce those parts of its policy which I consider evil, a reasonable man must assume that, given the exigencies of

war, nuclear weapons or other immoral practises would be utilized if the national leadership considered them necessary to avoid defeat. History is filled with wars which began with the noblest of intentions, but which degenerated into evil practises. The very fact of the existence of a nuclear potential rules out the possibility of assurance of a just war. The same thing was said of the invention of gunpowder, and in fact I agree with that as well. I can find no example of war since the invention of gunpowder of which I can say it began, was conducted, and ended justly. For that matter, nor can I find an example of war *before* the invention of gunpowder which met all the criteria of the teachings of my Church.

The report of the Department of Justice comments that "he also admitted that his belief that the next war would be an unjust war is a matter of opinion." The hearing officer did indeed ask me if I agreed with him that my belief in the unjustness of the next war was an opinion, and I did agree with him. However, upon reflecting on that statement, I feel that "opinion" is not quite the correct word. I think that my belief in the unjustness of the next war would more appropriately be called a "judgment", that is, an analysis or interpretation which forms the basis for action. In seeking guidance for the determination of such a judgment, I look first to the Church. The Church, as the Church, has no official position on the application of its teachings to possible future political events. On the other hand, many theologians agree with my position, and I have in fact based my position in large measure upon the statements of these theologians. On the other hand, the presence of many priests in the armed forces indicates that there is by no means any unanimity on the question

among Churchmen. The next place to seek guidance is from the government; but in this case, such a quest is futile—no government, no civil authority would admit to an unjust war, even if in fact it were intending to wage one such wilfully. Therefore, I am forced to rely on my own conscience, which the Church teaches must always be our ultimate and final guide. My conscience has formed a judgment, which I must accept and follow.

Although I said that I could participate in a just war, even in a combatant status, this was purely a theoretical statement. If I had wings I could fly. I maintain that this "just" war is, in the real world, not capable of occurring; that as a result of the Sin of Adam and the consequent Corruption of the Human Will, it is inconceivable that a just war will ever happen—since there never has been one, as far as I can tell, and I hardly expect that Men will suddenly change. Consequently, I must refuse military service.

In summary, my position is based on an application of the teachings of my Church as I see them applied to the military policies of this country, which I consequently must consider immoral and worthy of condemnation; and my belief that a Just War is impossible, given current technology and the imperfection of the Human Race as Sons of Adam.

Thank you for your consideration.

In Peace through Christ,

/s/ Stephen Spiro
Stephen Spiro